

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION**

RODNEY D. PIERCE; *et al.*,

Plaintiffs,

v.

THE NORTH CAROLINA STATE
BOARD OF ELECTIONS; *et al.*,

Defendants.

Case No. 4:23-cv-193-D

JOINT NOTICE OF SUBMISSION OF PROPOSED SCHEDULING ORDERS

Pursuant to D.E. 61, 65, and 66, the parties jointly submit this Notice of Submission of Proposed Scheduling Orders within two business days of the issuance of an order by the United States Court of Appeals for the Fourth Circuit in No. 24-1095, *Pierce v. N.C. State Bd. of Elections*, on Thursday, March 28, 2024. The parties met and conferred and could not agree on a proposed schedule. As such, the parties provide the following:

1. Legislative Defendants' Proposed Schedule is attached hereto as **Exhibit 1**. Legislative Defendants submit that their Proposed Schedule allows the Court to properly consider endogenous elections, which this Court and the Fourth Circuit recognized are more probative than exogenous elections. [D.E. 61 at p. 31; D.E. 68 at pp. 27-28]. Legislative Defendants believe that Plaintiffs' proposed December 2, 2024 trial date would not provide sufficient time for the parties' experts to analyze the final election results from the November 2024 elections—the official certified results will not be final until after the Statewide canvass, which is most likely to be held

on or about November 26, 2024. Moreover, Legislative Defendants propose a trial date in the first week February 2025—approximately a year before primaries for the 2026 elections. Legislative Defendants’ Proposed Schedule also contemplates Plaintiffs’ expert reports to be served first, as Plaintiffs bear the burden of proof, and that deadline is over 8 weeks away from the date of this Notice.

2. Plaintiffs’ Proposed Schedule is attached hereto as **Exhibit 2**. Plaintiffs submit that the Court should set trial no later than December 2024, which would allow the parties’ experts to incorporate the results of the Districts 1 and 2 elections into their opinions. It is unnecessary and prejudicial to push out the trial date to February 2025 to allow for a second round of full blown expert reports and depositions. Given the realities of this litigation, potential appeals, and the need for remedial proceedings if Plaintiffs are successful, Plaintiffs anticipate that – under the schedule Legislative Defendants propose – Legislative Defendants may eventually argue that there is not enough time to afford relief in advance of 2026. Separately, Legislative Defendants’ schedule is not reciprocal – they allot themselves 6 weeks to respond to Plaintiffs’ expert reports, but they allot Plaintiffs only 3 weeks to respond to Legislative Defendants’ expert reports, which may contain significant statistical analysis. The Court should order that all parties’ opening expert reports, rebuttal expert reports, and reply reports are due on the same dates.

3. State Board Defendants have no objection to either Legislative Defendants’ or Plaintiffs’ Proposed Schedules.

Respectfully submitted, this the 1st day of April, 2024.

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** Appeared via Special Notice*

**NORTH CAROLINA
DEPARTMENT OF JUSTICE**

By: /s/ Terence Steed (per email auth. 4.1.2024)

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CERTIFICATE OF SERVICE

I, Phillip J. Strach, hereby certify that I have this day electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will provide electronic notification to counsel of record.

This the 1st day of April, 2024.

**NELSON MULLINS RILEY &
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